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MEMORANDUM

SE #02-03

To: Directors of Special Education
From: Robert Marra, Associate Superintendent
Date: May 28, 2002
Re: Manifestation Determination

In August 2001 the Division issued a memo (SE#01-08) regarding use of manifestation determinations in situations in which the student has not been subjected to a disciplinary change of placement. As a result of further review, SE#01-08 and its directives are rescinded effective this date and replaced with the directives of SE#02-03. This memo clarifies the use of manifestation determination and the availability of an expedited hearing.

A manifestation determination is an evaluative process. The term "manifestation determination" describes the process utilized by the case conference committee (CCC) to evaluate the student's behavior in relationship to the student's disability, IEP or placement.

When a student is subjected to a disciplinary change of placement (unilateral removal from the current placement for more than ten consecutive instructional days), the CCC is required to conduct a manifestation determination in accordance with 511 IAC 7-29-6(d). With limited exception the disciplinary change of placement may not continue or otherwise occur if the CCC determines that the student's behavior is caused by or a manifestation of the student's disability, deficiencies in the student's IEP or its implementation, or an inappropriate placement. Further, if the CCC determines the behavior is the result of IEP content or implementation deficiencies or an inappropriate placement, the CCC must also take appropriate action to remedy the identified deficiencies or placement. If the parent disagrees with the school's position that the behavior is not a manifestation of the student's disability, the parent may request an **expedited** due process hearing. The due process hearing is expedited because an immediate change of placement is at stake.

When the school imposes disciplinary action or other school-based sanctions, other than a change of placement, a parent may request that the CCC conduct a manifestation determination. Such a request, in the absence of a pending disciplinary change of placement, must be treated as a request for the CCC to evaluate the relationship between the student's behavior and the student's disability, IEP, or placement. However, the CCC's determination does not impact any of the discipline or other sanctions that have previously been imposed for this behavior. The CCC should take appropriate action to prevent a recurrence of the behavior, address consequences for future occurrences of the behavior, and remedy any deficiencies in the student's IEP or placement (e.g., FBA, BIP, revised IEP, different placement, etc.). If the parent and the school cannot reach agreement on the changes needed in the student's IEP or placement, including the development or content of a BIP, the parent may request mediation and/or a due process hearing to resolve the disagreement. However, the due process hearing is **not expedited**.

Schools are encouraged to address behaviors when they first appear. Convening the CCC to review the circumstances before behavior escalates to the point of disciplinary action is a proactive measure. The CCC should consider whether the student's behavior can be addressed through revisions to the student's IEP or behavioral intervention plan. Such proactive revisions may reduce or eliminate the need for more drastic interventions in the future.

Cc: Division staff